



WESTERN WATERSHEDS PROJECT
PRAIRIE FALCON AUDUBON

188 IBLA 277

Decided September 16, 2016



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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IBLA 2014-55

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Appeal from a Record of Decision of the State Directors, Wyoming and Idaho State Offices, Bureau of Land Management, approving the grant of rights-of-way for an electrical transmission line project. WYW-174598 & IDI-35849.

Affirmed.

1. Environmental Quality: Environmental Statements;
Federal Land Policy and Management Act of 1976:
Rights-of-Way;
National Environmental Policy Act of 1969:
Environmental Statements;
Rights-of-Way: Applications

BLM properly grants a right-of-way for an electrical transmission line and related facilities, following preparation of an environmental impact statement, where it has taken a hard look at potential significant environmental consequences of doing so, and reasonable alternatives thereto, in accordance with the National Environmental Policy Act of 1969. BLM's decision will be affirmed on appeal where the appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action or otherwise failed to abide by the statute.

APPEARANCES: Katie Fite, Biodiversity Director, Western Watersheds Project, for Western Watersheds Project; Julie Randell, Conservation Chair, Prairie Falcon Audubon, for Prairie Falcon Audubon; Martin K. Banks, Esq., Lauren E.C. Hosler, Esq., and Aaron C. Courtney, Esq., Salt Lake City, Utah, for PacifiCorp, d/b/a Rocky Mountain Power, and Idaho Power Company; Philip C. Lowe, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Western Watersheds Project and Prairie Falcon Audubon (collectively WWP) appealed from and petitioned to stay the effect of a November 12, 2013, Record of Decision (ROD) of the State Directors, Wyoming and Idaho State Offices, Bureau of Land Management (BLM).¹ The ROD approved the granting of rights-of-way (ROW) to PacifiCorp, d/b/a Rocky Mountain Power, and Idaho Power Company (collectively, Proponents) for the “Gateway West Transmission Line Project” (Project).² It was based on an environmental impact statement (EIS) prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2012). The Proponents’ ROWs, WYW-174598 and IDI-35849, authorize the construction, operation, maintenance, and termination of transmission lines in an east-west corridor stretching from the Windstar Substation near Glenrock, Wyoming, across public lands in western Wyoming and eastern Idaho, to the Hemingway Substation near Murphy, Idaho. We affirm the ROD because WWP failed to establish any error of fact or law in BLM’s decision to approve the granting of ROWs for the Project.

Background

The Proponents jointly proposed the Project to meet future demands for electricity, comply with their Integrated Resource Plans that had been approved by public utility commissions, “relieve operating limitations, increase capacity, and improve reliability in the existing electrical transmission grid,” which is “essential” to their providing safe, reliable, adequate, and efficient energy delivery to more than 2 million customers in Wyoming, Idaho, Utah, Oregon, Washington, and California.³ The Project includes ROWs for constructing, operating, maintaining, and terminating their facility, to be granted pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (2012), and implementing rules in 43 C.F.R. Part 2800 (Rights-of-Way Under FLPMA).

The Project corridor is nearly 1,000 miles long. It runs across State lands (73.4 miles), private lands (434.9 miles), and public lands (451.1 miles), plus

¹ Appeals were also filed by other parties, which were docketed as IBLA 2014-74 and IBLA 2014-75, and consolidated by Orders dated Feb. 4, 2014. Since they raise different issues of fact and law, we will address them separately.

² We granted Proponents’ motion to intervene by Order dated Mar. 5, 2014, and denied WWP’s stay petition by Order dated Mar. 7, 2014.

³ Motion to Intervene at 2; *see id.* at 3-4.

other Federal lands (21 miles) managed by the Fish and Wildlife Service (FWS), U.S. Department of the Interior.⁴ The Project area is covered by multiple, Federal land-use plans.⁵ Its transmission ROWs would be for renewable 30-year terms and be 125 feet wide to accommodate H-frame structures that would be 60-90 feet tall at intervals of 800 feet (single-circuit 230-kV), 150 feet wide to accommodate H-frame structures that would be 80-110 feet tall at intervals of 800 feet (345-kV), and 250 feet wide to accommodate lattice steel structures that would be 145-180 feet tall at intervals of 1,200 to 1,300 feet (single-circuit 500-kV).⁶

BLM published a Notice of Intent (NOI) to prepare an EIS, which initiated a public-scoping period for the Project.⁷ It issued a Draft EIS, a Final EIS (FEIS) with an additional public comment period, and then prepared a Biological Assessment, which FWS responded to by preparing a Biological Opinion (BiOp) that assessed impacts on threatened species, endangered species, and critical habitat pursuant to section 7 of the Endangered Species Act of 1973 (ESA), 16 U.S.C. § 1536 (2012).⁸ Due to its large size, the Project was divided into 10 segments for purposes of analysis (e.g., Segments 1 through most of Segment 4 were in Wyoming, with the remaining segments located in Idaho).

The Project area includes the Greater sage-grouse (*Centrocercus urophasianus*), a species FWS determined was proper for listing as a threatened and endangered species under the ESA, but after extensively reexamining the status of the species and conservation efforts by Federal and State agencies, FWS concluded its listing was no longer warranted.⁹ BLM required surveys of Greater sage-grouse and other special status species and specified that any populations or occupied habitat should be avoided.¹⁰ For example, it specified no surface occupancy within buffer areas around occupied leks (i.e., breeding and/or strutting areas) or within even larger buffer areas

⁴ See EIS at 2-2 (Table 2.1-1).

⁵ See *id.* at 1-34 (Resource Management Plans (RMPs) for Morley Nelson Snake River Birds of Prey National Conservation Area, the Casper, Rawlins, Pocatello, Monument, Cassia, Owyhee, Green River, Kemmerer, and Jarbidge resource areas, plus Management Framework Plans (MFPs) for Bruneau, Bennett Hills/Timmerman Hills, Twin Falls, and Kuna).

⁶ See *id.* at 2-3, 2-4.

⁷ 73 Fed. Reg. 28425 (May 16, 2008).

⁸ See 76 Fed. Reg. 45609 (July 29, 2011); FEIS, Appendix L (Response to Comments on Draft EIS); 78 Fed. Reg. 24771 (Apr. 26, 2013); ROD, Appendix A (Response to Comments on FEIS); ROD at 46, 50, 53, 86; ROD, Appendix H (BiOp).

⁹ See 80 Fed. Reg. 59858 (Oct. 2, 2015); 75 Fed. Reg. 13910 (Mar. 23, 2010).

¹⁰ See EIS at 2-158 to 2-160, 2-164 to 2-166.

during the breeding season, and that there could be no Project construction until it approved both a Greater Sage-Grouse Avoidance, Minimization, and Mitigation Plan (S-G Mitigation Plan) and a Migratory Bird Habitat Conservation Plan.¹¹

BLM considered the Project proposed by Proponents, its preferred alternative (an amalgam of BLM preferences for each route segment), and the environmentally preferable, no action alternative.¹² BLM also considered design alternatives, underground alternatives, and 36 route and substation alternatives to avoid or minimize environmental impacts.¹³ BLM addressed direct and indirect impacts on 22 environmental resources within a 2-mile corridor on either side of the Project's centerline and considered cumulative effects, together with other past, present, and reasonably foreseeable future actions.¹⁴

After the EIS was finalized, Proponents determined its transmission lines needed to be re-routed in Lincoln County, Wyoming, where above-ground structures were prohibited by private property easements (Buck Ranch), would be located in a landslide-prone area, or near the community of Cokeville.¹⁵ In order to consider potential solutions, BLM commissioned the Lincoln County Reroute Report (LCRR), which analyzed the impacts of re-routing and concluded that any environmental issues from crossing public lands had already been "adequately addressed in the existing EIS."¹⁶ BLM then approved the use of public lands for its Preferred Alternative or the Cokeville Re-route, so long as Proponents obtained necessary private land access.¹⁷

The State Directors approved the Preferred Alternative with modifications, the "Selected Alternative," and granting of ROWs because they would achieve the Project's

¹¹ See *id.* at 2-165 to 2-166; ROD at 10, 16-17 (plans must be coordinated with FWS, finalized, and approved by BLM before any construction could begin), 39 ("[BLM] responsible for ensuring compliance with all adopted mitigation measures), 88 (BLM responsible for monitoring compliance).

¹² EIS at ES-7 to ES-8 (Preferred Routes by Segment), 2-1 to 2-11, 2-12, 2-32 to 2-49, 2-52 to 2-86, 2-118 to 2-125; ROD at 23-33, 41-45.

¹³ See EIS at 2-32 to 2-37, 2-52 to 2-86, 2-125 to 2-138.

¹⁴ See *id.* at 2-178 to 2-204, 3.1-1 to 3.23-20, 4-1 to 4-92; ROD at 10.

¹⁵ See ROD at 18-19, 26-29.

¹⁶ ROD at 18; see *id.* at 27 ("Public and private land resources affected by the reroutes are of the same nature and type, and the effects are of the same scope and intensity as those analyzed in the EIS[.]"); *id.*, Appendix I (LCRR); LCRR at 7, 10 (Table 3), 11-12, 14, 15, 16-17, 17, 18, 19, 22-23.

¹⁷ See ROD at 18, 19 ("The transmission line's final location will primarily be determined by the Proponents' ability to acquire private land access"), 28, 88.

purpose while also being sensitive to resource concerns in the area.¹⁸ Although their approval was subject to all mitigation measures in the EIS, including environmental protection measures (EPM), it specified that no surface-disturbing activities could occur until BLM also approved a plan of development that incorporated all mitigation measures and issued a Notice to Proceed.¹⁹ They deferred granting approvals for Segments 8 and 9 (roughly 300 miles in Idaho) until siting differences were reconciled by and between Federal, State, and local parties.²⁰ The Project generally conformed to applicable land-use plans, but it did not entirely conform to the Green River and Kemmerer RMPs. As a result, BLM proposed RMP amendments that were the subject of protests denied by the BLM Director on September 20, 2013, after which they were approved by the State Directors as part of the ROD.²¹

WWP filed a timely appeal from the ROD.²² This matter is now ripe for decision.

Discussion

It is well established that a decision to grant an ROW under FLPMA is committed to BLM's discretion, and thus constitutes a decision that will be overturned only if it acted in an arbitrary and capricious manner or contrary to law.²³ WWP principally contends in this case that BLM violated section 102(2)(C) of NEPA by failing adequately to (1) assess environmental baseline conditions; (2) consider

¹⁸ See ROD at 3-5, 22 ("The Selected Alternative . . . provides the most public benefits, balances multiple resource conflicts, and avoids the most resource impacts"), 45-46, 88-89; EIS at ES-7 to ES-8; 78 Fed. Reg. 68467 (Nov. 14, 2013).

¹⁹ See Answer at 6; ROD at 3, 5, 10, 16, 21-22, 39; *see also id.* at 3 ("[Proponents must obtain] all necessary local, state, and federal approvals, authorizations, and permits").

²⁰ See ROD at 3 ("This decision is conditioned . . . on acceptance of mitigation plans and monitoring programs, including . . . a Migratory Bird Habitat Conservation Plan [and] a Sage-grouse Mitigation Plan"), 10, 16-17, 38, 46, 88-89; EIS at 2-143 to 2-177 (EPMs).

²¹ See ROD at 1, 9, 22, 33-35, 91; *id.*, Appendix K (Protest Resolution Report); *see also id.* at 35-37 (Idaho and Wyoming provided with an opportunity to identify and resolve any inconsistencies between BLM's proposed amendments and State/local plans).

²² WWP filed a stay petition (Petition) and submitted three slightly different versions of its notice of appeal/statement of reasons (SOR), two faxed and one mailed to the Board; we cite only to its mailed copy. BLM filed only an opposition to WWP's stay petition (BLM Opp.); Intervenor-Proponents filed an Answer (Int. Answer), which was replied to by WWP (Reply).

²³ See, e.g., *Santa Fe Northwest Information Council*, 174 IBLA 93, 104 (2008).

impacts on the Greater sage-grouse, other wildlife, aquatic species, and water quality and quantity; (3) consider cumulative impacts of the Project, together with livestock grazing and range improvements, energy development, other transmission and utility lines, roads, and wildfires; (4) identify mitigation measures; and (5) consider an appropriate range of reasonable alternatives to the proposed action. In addition, it summarily asserts BLM improperly segmented the Project and that it violated the ESA, FLPMA, the Migratory Bird Treaty Act (MBTA),²⁴ the Bald and Golden Eagle Protection Act (BGEPA),²⁵ the Clean Water Act (CWA),²⁶ and the Wild and Scenic Rivers Act (WSRA).²⁷ We first dispense with its summary assertions of error and then address its NEPA claims.

WWP claims BLM violated NEPA by deferring a final decision on Segments 8 and 9, but since they were analyzed in the EIS, we find no violation of the rule against segmenting a project.²⁸ It claims the BiOp was “not adequate” and violates the ESA, but we do not have jurisdiction to address that claim.²⁹ While WWP does “not believe” the ROD conforms to applicable land use plans and summarily asserts BLM violated a FLPMA policy, it has made scant effort to identify or demonstrate how or in what way BLM violated FLPMA.³⁰ WWP similarly asserts but fails to identify or demonstrate how BLM violated the MBTA, BGEPA, CWA, or WSRA.³¹ So considered, we summarily reject each of these claims on appeal and proceed to address WWP’s NEPA claims.

Standard of Review for Appellants’ NEPA Claims

[1] NEPA requires a Federal agency to prepare a “detailed statement” addressing the potential environmental impacts of a proposed action and alternatives thereto in the case of any major Federal action that “significantly affect[s] the quality of the human environment.”³² It does not mandate a particular result, only procedural

²⁴ 16 U.S.C. §§ 703-712 (2012).

²⁵ 16 U.S.C. §§ 668-668d (2012).

²⁶ 33 U.S.C. §§ 1251-1387 (2012).

²⁷ 16 U.S.C. §§ 1271-1287 (2012).

²⁸ Petition at 11; SOR at 7 (“[Segmented decisionmaking] may violate NEPA”); Reply at 2-13; 40 C.F.R. § 1508.25; *but see* ROD at 19-20, 89; EIS at 1-25 to 1-26.

²⁹ SOR at 20; *but see Backcountry Against Dumps*, 179 IBLA 148, 180 (2010).

³⁰ SOR at 11, 27 (quoting 43 U.S.C. § 1701(a)(8) (2012)).

³¹ SOR at 3, 6 (Draft S-G Mitigation Plan may adversely affect migratory bird habitat), 12 (“waters are threatened by harmful chemicals”), 21; *but see* EIS at 2-146, 2-163, 3.10-5 to 3.10-6, 3.10-17 to 3.10-26, 3.10-32 to 3.10-41, 3.10-44 to 3.10-49, 3.10-51 to 3.10-99; ROD at 9, 46, 53, 86.

³² 42 U.S.C. § 4332(2)(C) (2012).

obligations requiring an agency and the public to be fully informed of the environmental consequences of a proposed action.³³ The adequacy of an EIS is judged by whether the agency took a “hard look” at the potentially significant environmental consequences of the proposed action, its reasonable alternatives, and all relevant matters of environmental concern.³⁴ In reviewing and adjudicating an EIS, we apply a “rule of reason.”³⁵

An appellant challenging a BLM decision to approve construction, operation, maintenance, and termination of electrical transmission lines and related activity following preparation of an EIS must carry its burden with objective proof demonstrating by a preponderance of the evidence that BLM failed adequately to consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by section 102(2)(C) of NEPA; it must make an “affirmative showing that BLM failed to consider a substantial environmental question of material significance” and cannot simply “pick apart a record with alleged errors and disagreements.”³⁶

In adjudging the adequacy of an EIS, the Board may properly rely on the professional opinion of BLM’s technical experts concerning matters within the realm of their expertise that are reasonable and supported by record evidence.³⁷ An appellant

³³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs [of going forward with the proposed action].”).

³⁴ See *Northwest Environmental Advocates v. National Marine Fisheries Service*, 460 F.3d 1125, 1139 (9th Cir. 2006) (“NEPA requires not that an agency engage in the most exhaustive environmental analysis theoretically possible, but that it take a ‘hard look’ at relevant factors”); *Backcountry Against Dumps*, 179 IBLA at 161 (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)), and cases cited.

³⁵ *County of Suffolk v. Secretary of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977), cert. denied, 434 U.S. 1064 (1978); see *Northwest Environmental Advocates v. National Marine Fisheries Service*, 460 F.3d at 1139; *State of California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (“[An EIS must contain] a ‘reasonably thorough discussion of the significant aspects of the probable environmental consequences.’”) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974)); *Northern Alaska Environmental Center*, 153 IBLA 253, 256 (2000).

³⁶ *Backcountry Against Dumps*, 179 IBLA at 161; see *Arizona Zoological Society*, 167 IBLA 347, 357-58 (2006).

³⁷ See *Backcountry Against Dumps*, 179 IBLA at 161-62.

challenging such reliance must demonstrate, by a preponderance of the evidence, “BLM erred when collecting the underlying data, when interpreting that data, or when reaching the conclusion, and not simply that a different course of action or interpretation is available and supported by the evidence.”³⁸ A mere difference of expert opinion about the likelihood or significance of environmental impacts will not suffice to show that BLM failed fully to comprehend the true nature, magnitude, or scope of the significant impacts.³⁹

1. *Whether BLM Adequately Assessed Baseline Conditions.*

WWP claims BLM failed to accurately assess the environmental baseline, especially “livestock-degraded ecological conditions of the lands and waters traversed by the line,” because it failed “to conduct necessary on-the-ground baseline inventories over all periods of [the] year for the broad range of BLM sensitive species affected by the biological footprint of the project.”⁴⁰ We are unpersuaded because we find from our review of the EIS that it amply demonstrates BLM adequately assessed, by survey and other methods, the environmental baseline conditions for the Project area. WWP has failed to carry its burden on appeal, with convincing argument or supporting evidence, to show any specific error or deficiency in that assessment.

2. *Whether BLM Adequately Considered Direct and Indirect Impacts.*

WWP argues that BLM failed to adequately consider the likely direct and indirect Project impacts on sage-grouse and other wildlife, aquatic species, water

³⁸ *West Cow Creek Permittees v. BLM*, 142 IBLA 224, 238 (1998) (“[An appellant] must show not just that the results of [BLM’s] study *could be* in error, but that they *are* erroneous.”).

³⁹ *Backcountry Against Dumps*, 179 IBLA at 162; *see also* *Center for Biological Diversity*, 181 IBLA 325, 341 (2012) (“[The Board] is not to decide whether an EIS . . . is based upon the best scientific data and methodology available or to resolve disagreements in the scientific community.”) (“Our concern is whether ‘BLM’s analysis of the available data was reasonable and provides an adequate basis for its decision.’”) (quoting *Wyoming Audubon*, 151 IBLA 42, 51 (1999); *see* *Life of the Land v. Brinegar*, 485 F.2d 460, 473 (9th Cir. 1973), *cert. denied*, 416 U.S. 961 (1974)).

⁴⁰ SOR at 8, 9: *see also id.* at 7 (“EIS does not provide a solid site-specific environmental baseline”), 11 (“Devil is in the details”), 12 (“necessary baseline surveys have not even been done”), (“basic geological info is minimal”), 14 (“[no studies of] important migration corridors and flight paths for migratory birds and raptors”), 23 (“portrayal of the degree and severity of existing habitat loss and fragmentation in the impacted landscape is woefully deficient”), 26.

quality and water quantity.⁴¹ The EIS includes a detailed list and discussion of likely direct and indirect effects of the project.⁴² In stark contrast, WWP's arguments are largely a loose weave of questions and observation on various aspects of the environment that may be adversely affected by Project activities, but WWP fails to identify the mechanism by which any aspect is likely to be affected or offer any convincing argument or supporting evidence to establish that the Project is likely to affect the environment in a manner or to a degree not addressed in the EIS or envisioned by BLM.

We therefore conclude that WWP has not carried its burden to show that BLM failed adequately to consider direct and indirect effects of the Project.

3. *Whether BLM Adequately Considered Cumulative Impacts.*

WWP claims BLM failed adequately to consider cumulative impacts from the Project, livestock grazing, and other activities, and that the "EIS does not adequately assess and analyze the full range of impacts of linked, foreseeable or connected wind energy, mining or other activities that will be facilitated by the [Project]."⁴³ BLM is plainly required to consider the likely cumulative impacts of a proposed action, and its EIS includes an extensive discussion of those impacts.⁴⁴ Rather than identify any such impacts that were ignored or overlooked by BLM or not adequately addressed in the EIS, WWP simply refers to ongoing impacts on wildlife and habitat from livestock grazing that may be exacerbated by the Project, without identifying any particular effects or offering any convincing argument or supporting evidence to show such effects are likely to occur.⁴⁵ WWP also suggests BLM may have failed to consider

⁴¹ SOR at 8, 15-16, 21.

⁴² See, e.g., EIS at 3.6-11 to 3.6-51 (Vegetation Communities), 3.7-19 to 3.7-56 (Special Status Plant Species), 3.8-6 to 3.8-27 (Invasive Plant Species), 3.9-7 to 3.9-36 (Wetlands and Riparian Areas), 3.10-20 to 3.10-99 (General Wildlife and Fish Species), 3.11-58 to 3.11-172 (Special Status Wildlife and Fish Species), 3.15-13 to 3.15-32 (Soils), 3.16-16 to 3.16-49 (Water Resources).

⁴³ SOR at 8, 26; see also *id.* at 4 ("Grazing disturbance will exacerbate the impacts of [the Project], as well as interfere with successful rehab[ilitation] and recovery of project and 'mitigation' sites."), ("a very significant new disturbance on cheatgrass and other weed-vulnerable lands that also suffer a very high livestock disturbance load.").

⁴⁴ 40 C.F.R. § 1508.7; see *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809-10 (9th Cir. 1999); *Backcountry Against Dumps*, 179 IBLA at 171-72, 173; *Howard B. Keck, Jr.*, 124 IBLA 44, 53 (1992), *aff'd*, *Keck v. Hastey*, No. 92-1670- WBS-PAN (E.D. Cal. Oct. 4, 1993); EIS at 4-50 to 4-92.

⁴⁵ SOR at 23-24; see *supra* note 39.

certain connected actions (e.g., wind energy development and mining), but it has failed to show how or in what way these actions are “closely related” and “connected” to the Project under 40 C.F.R. § 1508.25, rather than a hypothetical or independent activity.⁴⁶

WWP has not shown the Project, together with any past, present, or reasonably foreseeable future livestock grazing or other activity, is likely to have a cumulative or synergistic effect on the environment that BLM was required to consider but did not or that there is likely to be an interaction between the Project and any past, present, and/or reasonably foreseeable future activities, which might result in a cumulative impact BLM failed to address.⁴⁷ Moreover, it is well established that in order to demonstrate a deficiency in BLM’s cumulative impacts analysis, “it is not sufficient merely to note the existence of other . . . projects . . . without concretely identifying the adverse impacts caused by such other . . . projects to which the action being scrutinized will add.”⁴⁸ We therefore conclude that WWP has failed to meet its burden to demonstrate BLM erred in its analysis and consideration of cumulative impacts.

4. *Whether BLM Adequately Identified Mitigation Measures.*

WWP asserts that virtually none of the identified measures for avoiding or mitigating adverse effects to the Greater sage-grouse and other resources have been finalized, claiming that BLM is required not only to consider, but also to adopt measures before it can properly approve the Project under NEPA.⁴⁹ The law under

⁴⁶ See *Backcountry Against Dumps*, 179 IBLA at 172.

⁴⁷ See, e.g., *Umpqua Watersheds, Inc.*, 158 IBLA 62, 73 (2000); *Klamath Siskiyou Wildlands Center*, 157 IBLA 332, 339-41 (2002); *Wyoming Outdoor Council*, 147 IBLA 105, 109 (1998).

⁴⁸ *National Wildlife Federation*, 150 IBLA 385, 399 (1999).

⁴⁹ SOR at 3 (“[N]early all plans to protect these resources are up in the air, and not finished at all.”), 4 (“Almost no major environmental protection and mitigation component has been finalized”), 13, 18, 22 (“There is . . . no certainty of mitigation, or of minimizing or mitigating . . . impacts under this loophole riddled ROD.”), 24 (“[U]ncertain mitigation actions may in the end result in even more and worse habitat degradation and fragmentation problems”), 25 (“There is tremendous uncertainty associated with where, when and how mitigation actions will occur, and how effective they will be”); see also *id.* at 6 (“[Draft S-G Mitigation] Plan . . . fails to use current best available science to mitigate impacts.”), 8-9 (“there is also greatly inadequate mitigation to address the massive livestock disturbance footprint in this landscape.”), 11-12 (“There are dozens of loose ends, and unresolved environmental protections and mitigation actions.”).

NEPA is clear and requires that “an EIS contain a detailed discussion of possible mitigation measures.”⁵⁰

Rules implementing NEPA expressly require an EIS to identify and address “appropriate mitigation measures” in its discussion of environmental consequences and that the ROD state “whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.”⁵¹ Since a “mitigation discussion without at least *some* evaluation of effectiveness is useless,” BLM must do more than list and perfunctorily describe mitigation measures, but it need not formulate and adopt mitigation measures that will, in fact, avoid or minimize significant environmental impacts.⁵² Nor need mitigation plans be “fully developed,” “legally enforceable, funded or even in final form to comply with NEPA’s procedural requirements,” as it will suffice if their mitigating measures are “described in general terms and rely on general processes [for determining what] specific mitigation or treatment, if any, is required.”⁵³

After extensive analysis, BLM determined the Project might kill or injure individual birds and disturb their habitat, but that it was not likely to have a significant adverse impact on the Greater sage-grouse or its habitat. Nonetheless, due to this species’ special status, BLM considered the effectiveness of numerous mitigation and

⁵⁰ *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 352; *see id.* at 351-52 (“The requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of the Act and, more expressly, from CEQ’s implementing regulations. Implicit in NEPA’s demand that an agency prepare a detailed statement on ‘any adverse environmental effects which cannot be avoided should the proposal be implemented,’ 42 U.S.C. § 4332(C)(ii), is an understanding that the EIS will discuss the extent to which adverse effects can be avoided.”).

⁵¹ 40 C.F.R. §§ 1502.14, 1502.16, 1505.2; *see also* 40 C.F.R. §§ 1508.20 (Mitigation), 1508.25(b)(3).

⁵² *South Fork Band Council of Western Shoshone of Nevada v. U.S. Department of the Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 351-52); *see Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000); *Southwest Center for Biological Diversity*, 154 IBLA 231, 243 (2001) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 352); *see also Center for Biological Diversity*, 181 IBLA at 376-77.

⁵³ *Hillsdale Environmental Loss Prevention, Inc. v. U.S. Army Corps of Engineers*, 702 F.3d 1156, 1174 (10th Cir. 2012); *Okanogan Highlands Alliance v. Williams*, 236 F.3d at 477; *The Laguna Greenbelt, Inc. v. U.S. Department of Transportation*, 42 F.3d 517, 528 (9th Cir. 1994).

monitoring measures that it adopted to avoid or minimize adverse effects on the Greater sage-grouse.⁵⁴ BLM also provided for the adoption of an S-G Mitigation Plan after it issued the ROD, but its details were already well known. More importantly, the ROD specified that no construction could begin until BLM determined the S-G Mitigation Plan would comply with Federal and State policies for avoiding or minimizing adverse effects to the species and its habitat and then approved that plan in coordination with FWS and State agencies.⁵⁵

We find BLM adequately identified and discussed appropriate mitigation measures and their anticipated effectiveness. It also discussed mitigation plans in sufficient detail to ensure that their environmental consequences were fairly evaluated. BLM also adequately explained why some measures were not yet final and how they would become so. We conclude from its discussion of mitigation, mitigation measures, mitigation plans, and their effectiveness that BLM complied with its NEPA obligations in these respects.

5. *Whether BLM Considered an Appropriate Range of Reasonable Alternatives.*

WWP asserts that BLM failed adequately to consider reasonable alternatives, “ranging from burying the line in some areas to co-location, to less destructive routing, to energy efficiency.”⁵⁶ As best we can glean from their pleadings, this assertion is the sum total of their argument and evidence showing a violation of NEPA and 40 C.F.R. § 1502.14. However, the record shows BLM considered co-locating the transmission line with other existing lines and facilities and burying the entire transmission line before considering it infeasible.⁵⁷ As to WWP’s remaining suggestions, they identify no alternative routes and offer no explanation for how “energy efficiency” would meet the purpose and need of the Project, which is “to provide for the delivery of up to 1,500 MW [of electricity] to the service areas of the Proponents.”⁵⁸ WWP has simply failed to meet its burden to show BLM failed to consider an appropriate range of reasonable alternatives or offer a reasonable alternative of its own.⁵⁹

⁵⁴ See EIS at ES-22 to ES-23, 2-141 to 2-142, 2-164 to 2-167, 3.11-1 to 3.11-31, 3.11-58 to 3.11-76, 3.11-136 to 3.11-172; ROD at 23-33, 38-39, 89.

⁵⁵ See ROD at 3, 5, 10, 16-17, 38-39, 88 (monitoring and enforcement of approved plan); *Okanogan Highlands Alliance v. Williams*, 236 F.3d at 477; see also EIS at 2-141 to 2-177.

⁵⁶ SOR at 8; see *id.* at 3.

⁵⁷ See ROD at 23-33; EIS at 2-129 to 2-138.

⁵⁸ EIS at 1-24.

⁵⁹ See *Backcountry Against Dumps*, 179 IBLA at 175; *Save Medicine Lake Coalition*, 156 IBLA 219, 245-46 (2002), *aff’d sub nom.*, *Pit River Tribe v. BLM*, 306 F. Supp. 2d

(continued...)

In sum, WWP has not met its burden to show error in the ROD or EIS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁶⁰ the decision appealed from is affirmed.

/s/
James K. Jackson
Administrative Judge

I concur:

/s/
Christina S. Kalavritinos
Administrative Judge

(...continued)
929 (E.D. Cal. 2004), *rev'd on other grounds*, 469 F.3d 768 (9th Cir. 2006); *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008); *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990).

⁶⁰ 43 C.F.R. § 4.1.